



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**WAGGONER CARR
ATTORNEY GENERAL**

July 21, 1966

Honorable R. L. Lattimore
Criminal District Attorney
Hidalgo County
Edinburg, Texas

Opinion No. C-728

Re: Authority of a county to
employ a Justice of the
Peace for the purpose of
interviewing land owners
in connection with the
acquisition of road
rights-of-way.

Dear Mr. Lattimore:

By letter to this office you have requested an
opinion in regard to the above referenced matter. We
quote from your letter as follows:

". . .

"This writer is of the definite opinion that
Article 16, Section 40 of the Constitution of the
State of Texas has no application in this case,
inasmuch as a Justice of the Peace is specifically
excepted from the effect thereof. However, this
writer is concerned over the fact of Article 373
of the Penal Code of the State of Texas on this
question, . . .

"A Justice of the Peace is a duly elected
officer of the county and would certainly appear
to be covered by Article 373, even though the
Article was apparently enacted particularly to
cover members of governing bodies of a city or
county of this State.

"It would appear to this writer that the
Justice of the Peace, if employed by Hidalgo
County to obtain easements from land owners in
this County, would be specifically pecuniarily
interested in the easements' contracts obtained
from the land owners, inasmuch as the continuation

of his job would certainly depend upon him acquiring such easements. To say the least, an advantage would result to him from the acquisition of such easements.

"Also, this writer feels that, as a matter of good public policy, no county officer should receive compensation for two separate types of employment from the county, and such would be the case now presented.

" . . . "

Article XVI, Section 40 of the Texas Constitution provides, in part:

"No person shall hold or exercise, at the same time, more than one Civil Office of emolument except that of Justice of Peace, . . . "

Article 373 of Vernon's Penal Code provides:

"If any officer of any county, or of any city or town shall become in any manner pecuniarily interested in any contracts made by such county, city or town, through its agents, or otherwise, for the construction or repair of any bridge, road, street, alley or house, or any other work undertaken by such county, city or town, or shall become interested in any bid or proposal for such work or in the purchase or sale of anything made for or on account of such county, city or town, or who shall contract for or receive any money or property, or the representative of either, or any emolument or advantage whatsoever in consideration of such bid, proposal, contract, purchase or sale, he shall be

fined not less than fifty nor more than five hundred dollars."

Section 40 of Article XVI of the Texas Constitution has no application in this situation inasmuch as Justices of the Peace are specifically exempt from the provisions thereof; furthermore, such employment would not, as a matter of law, constitute a civil office of emolument. Dunbar v. Brazoria County, 224 S.W.2d 738 (Tex.Civ.App. 1949, error ref.); Aldine Independent School District v. Standley, 154 Tex. 547, 280 S.W.2d 578 (1955); City of Groves v. Ponder, 303 S.W.2d 485 (Tex.Civ.App. 1957, error ref. n.r.e.); Northwestern National Life Insurance Co. v. Black, 383 S.W.2d 806 (Tex.Civ.App. 1964, error ref. n.r.e.).

Article 373 of the Penal Code does not prohibit such employment for the reason that the employment of an individual by a county does not constitute a pecuniary interest in any of those types of contracts made by a county which are set out in Article 373.

The principles of law to be applied to this question are the same as those set forth in opinions of this office which hold that county officers may be employed by the county to perform duties which are not required of the officer by law; for example, a county attorney being employed to represent the county in civil actions. Attorney General's Opinions O-864 (1939), O-4301 (1942) and O-6534 (1945).

In a similar fact situation this office held that a county commissioner may also serve as a bus driver for a common school district. Attorney General's Opinion O-4957 (1942).

S U M M A R Y

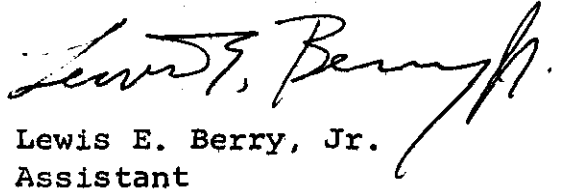
A county may employ a Justice of the Peace for the purpose of interviewing land owners in connection with the acquisition of road rights-of-way.

Hon. R. L. Lattimore, page 4 (C-728)

Yours very truly,

WAGGONER CARR
Attorney General

By:


Lewis E. Berry, Jr.
Assistant

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APPROVED:
OPINION COMMITTEE

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APPROVED FOR THE ATTORNEY GENERAL
BY: T. B. Wright